EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IRA BROUS and MICHELLE SCHUSTER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v. 24 Civ. 1260 (ER)

ELIGO ENERGY, LLC and ELIGO ENERGY NY, LLC,

Defendants.

Telephone Conference

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New York, N.Y.
November 7, 2024
11:00 a.m.

Before:

HON. EDGARDO RAMOS,

District Judge

APPEARANCES

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(Case called)

MR. BLANKINSHIP: Good morning, your Honor. This is Greg Blankinship representing the plaintiffs. And also with me today are my co-counsel, Burkett McInturff and Jessica Hunter.

MR. MEADOWS: Good morning, your Honor. This is Ryan Watstein for defendant Eligo Energy. And with me are my colleagues, David Meadows and Abigail Howd.

THE COURT: Good morning to you all.

This matter is on for a conference. I note for the record that it is being conducted by telephone. I want to advise the parties -- also, there are a number of issues that we need to discuss. I only have 45 minutes, so please, please be as concise as you possibly can in discussing these various topics.

Let me also say at the outset that we are here to discuss any number of letters that have been filed, beginning on October 22. On that day, I believe I got five or six letters from Plaintiffs' counsel, all involving different discovery issues, and each at least three pages long, many with exhibits that went into the hundreds of pages. I have been doing this for sometime now, and never in any case of any size have I ever gotten that deluge of letters on one day.

Mr. McInturff, I believe you signed these letters. I consider this to be close to an abuse of my individual rules. I don't know why it was that you needed to file that many

letters, but in any event, it's done. Please refrain from doing that in the future.

Now, let's discuss these one at a time. There is a dispute concerning the time frame of discovery. These are addressed at document 74 and 101. Mr. Blankinship, tell me what the issue is there. Apparently you want to go back to 2012. Is that right?

MR. BLANKINSHIP: Your Honor, if it's okay with you, my co-counsel, Mr. McInturff, will handle this particular issue.

THE COURT: Mr. McInturff.

MR. MCINTURFF: Yes, your Honor. And I apologize for the many letters. We certainly did not intend to overburden the Court or to violate your Honor's rules. It's just that the number of disputes that have come up is quite large. And, in fact, preceding ECF number 74, which I am happy to talk about, is ECF number 69 and 83, which is the letter motion that is what this conference was scheduled for. I just wanted to bring that to the Court's attention.

THE COURT: Okay. Let's discuss this one first.

MR. MCINTURFF: Okay. So by background, the named plaintiff, Ms. Schuster's contract is dated October 9, 2016, and this case involves a breach of contract claim as well as consumer protection claims related to the contract and the welcome letter that Plaintiff Schuster received in 2018 -- I'm

sorry, that she received when she signed up in 2016. The defendants are proposing to limit discovery to the presumptive six-year -- or to limit ESI e-mail collections to the presumptive six-year statute of limitations, and we disagree with the limitation of the e-mail collection to just 2018 for several reasons. The first is, Ms. Schuster signed up in 2016. Her contract was dated 2016.

Defendants have also produced all of their New York contracts. As your Honor will recall, this case is currently limited to New York class discovery. They produced all of their New York contracts, and they produced them in chronological order at ECF number 44-7. Ms. Schuster's contract is just the second of many contracts that were produced in chronological order.

The first contract that was produced is dated 2014, February of 2014, so early 2014, and that contract contains the exact same pricing term that Plaintiffs allege in this case was breached and contains a deceptive description of how Defendant will set its rate. So there is most certainly e-mails going back to when Eligo started doing business in New York, which is 2013, that are germane to the claims at issue in the case, particularly, you know, what's in this contract, e-mails from the defendant talking about complying with the terms of the contract, how defendants set up its initial rate-setting practices to comply with the terms of the contract.

Now, it is also undisputed that there are class members who have claims during the baseline statute of limitations period who were enrolled under the terms of these contracts, Ms. Schuster being the representative. Again, she enrolled in 2016, and her claims come into the present.

So all we are asking for Defendant to do is to collect e-mail that goes back to when it started doing business in New York, that's 2013, and then to enter the stopping point not to be the day that Plaintiff filed the complaint, but rather, the day that they make their collection. So whenever they collect the e-mail, that would be the day that they stop. That's a very common practice in electronic discovery. And there is no dispute that e-mail and other forms of communication are relevant. The only issue is, is it proportional to go back that far in time, and then to collect as of the date that they make the collection, and not cut it off with the complaint.

Now, Eligo's response is, essentially, to misstate our request. We are not looking for e-mails since the inception of the company. We are just looking for e-mails for when Eligo started doing business in New York. We are also not looking for Eligo to make multiple collections. We are just saying that when Eligo makes its e-mail collection, it should make the collection as of the date it collects, and not cut it off at the complaint.

Now, under the normal discovery rules, once we have shown that e-mail is relevant, which, again, no party disputes, the burden shifts to Eligo to show that the discovery is disproportionate. The issue here is that Eligo has made no showing whatsoever regarding disproportionality. And one of the overall themes of this case is that -- or in the, I should say, in the motions that we are going to discuss today, is Eligo has repeatedly complained that the discovery we are seeking in this case is not proportional, but what Eligo is not disclosing is the tens of millions of dollars at stake in this case and the tens of thousands, if not more than 100,000, potential class members in this case.

We recently looked at the public data on Eligo's electricity sales alone, not including gas sales, in 2023, and it's in -- well into $70 million. My co-counsel, Mr. Blankinship, and I have done a number of these cases against independent energy companies that overcharge their customers, and damages in those cases are typically well into the tens of millions of dollars.

So the question here posed by this motion is, is this a digital e-mail collection disproportionate to the needs of the case? And Plaintiffs posit that Eligo has not met its burden to show that e-mail collection for the period that no one disputes covers the class period should not be done.

THE COURT: Mr. Watstein.

MR. MEADOWS: Your Honor, David Meadows. With your permission, I will address this.

THE COURT: Mr. Meadows.

MR. MEADOWS: Thank you, Your Honor.

When you introduced this motion this morning, your Honor, you were exactly right about what Plaintiffs are seeking. They want us to collect e-mails going back 12 and a half years, all the way to, essentially, the inception of Eligo, which was founded in 2012 -- didn't exist before that -- to collect virtually every e-mail that is currently stored on their company's systems, which would essentially be every e-mail that the company ever exchanged, whether internally or externally.

To give you a sense of the scale of that, we have already collected e-mails confined to the presumptive class period, and what we have collected is over 4 million e-mails. I think 4.25, to be precise. Now, in relation to that, and I think -- I do agree with opposing counsel, the issue here is proportionality more than anything. So when we factor in proportionality, we should be looking at, I think, primarily two things: One is the proportion of the discovery that the plaintiffs are seeking relative to Eligo's size and capabilities to produce it, and then, secondly, to the legitimate needs of this case.

Now, firstly, Eligo, as I said, is a young company.

It's a small company. It has fewer than 50 employees. I think it was three years ago Eligo suffered a sizable financial loss from operations that nearly bankrupted the company. Even though its sales may be in the tens of millions of dollars, its net income is generally much, much smaller than that.

The scope of the e-mail discovery that Plaintiffs are requesting here alone would cost hundreds of thousands of dollars, if not millions, to search and produce. And so at a threshold level, that is completely disproportionate to Eligo's resources.

And by the way, given even the number of motions the plaintiffs have been filing, which you noted at the outset, your Honor, and the amount of time and effort that has required us to devote to that, among other tasks on the case, our client has been incurring a run rate on legal fees of over $200,000 a month, which is unsustainable for this small company. But let me also address what are the legitimate needs of the case. Is there any legitimate need for the plaintiffs to insist on collecting e-mails that are 12 and a half years old? And the answer is, there isn't.

This is certainly not the only or the first case of this kind filed against an ESCO in the Second Circuit. There are many. What the Second Circuit has repeatedly held is that these are fairly simple and straightforward cases that rise and fall on the language in the customer agreement that's at issue.

Here, Eligo's customer agreement was quite simple. It directed that Eligo would calculate variable rates for green electricity according to some very broadly described factors, based on market factors like market pricing, and things of that nature, none of which are defined in the agreement.

Now, we have already produced the core information and are further in the process of producing the core information on whether Eligo complied with that very simple contractual directive. In fact, most of the rate setting that was done under the class period was done with a machine learning model called Groove. We have already begun producing the inputs into that Groove model. Plaintiffs know what rates we charge. And so the issue of showing whether or not we took into account the requisite market factors as vaguely or as broadly defined in the contract is really not going to be subject to much dispute. And, in fact, your Honor, we intend to move for summary judgment on that issue in fairly short order under binding Second Circuit authority which we think is going to be right on point with this case and show that we are entitled to judgment as a matter of law. So the scope of discovery they are seeking is huge. They have no legitimate need to prove a breach by trolling through millions of e-mails that are up to almost 13 years old, and it is completely out of proportion to what the case involves.

And as a last addition -- I am trying to be brief --

we filed a motion last night to ask you to place overall proportional limitations on discovery, given the incredible demand the plaintiffs are making in this case and the number of motions they have been filing. And I would respectfully submit that a very efficient way to sort through what you now have in front of you is to, frankly, defer all of these motions and take up that overall motion to limit discovery, because we think that what's going on here is an abuse of the discovery process that is designed, if not intended, to pressure us with costs to settle what we regard as baseless claims.

THE COURT: So what's your counterproposal, Mr. Meadows, to --

MR. MEADOWS: On this discreet issue, your Honor, it would be that the e-mail collection be limited to the class period, which is almost seven years in length, and that also, the overall number of e-mails that Eligo is obligated to search and produce be strictly limited in number, given the massive number that we have already collected.

THE COURT: I am going to restrict the time period from October of 2016 to the date of the filing of this complaint, which is February 20. I am not going to impose any limit on the number, unless, Mr. Meadows, you come back and say, you know, there's, you know, 50 million e-mails and it's going to be too expensive for us to produce them.

MR. MEADOWS: Your Honor, if I may interject. I think

that is part of what we are saying, yes. We have already collected the e-mails over the period that you just identified. That number is over 4 million. Even with -- we have tried some basic term searching against that already, and even that has not reduced our number below the hundreds of thousands, which would cost over a million dollars, we think, to review. So here again, I think we need some overall limits on ESI discovery to save us from the incredible burden that would be required for us to review these 4 million plus e-mails that we have already collected.

THE COURT: Have you agreed on search terms?

MR. MCINTURFF: Your Honor, this is Burkett McInturff. Can I respond to some of the comments defense counsel raised, to put things in context?

THE COURT: No.

Mr. Meadows.

MR. MEADOWS: We have agreed on search terms with the other side. In fact, we have not received any search terms from the plaintiffs until, I think, two days ago, when we were in the midst of replying to all of these motions.

What we have done thus far, your Honor, is run some search terms of our own against that set of 4.25 million e-mails to get a sense of what they yield and how much we can kind of knock that number down. And given the shear number of e-mails, we are having a very hard time with reasonable search

terms getting that number anywhere below the mid hundreds of thousands. And even that as a review database would impose costs of approximately a million dollars on us to review.

MR. WATSTEIN: This is Ryan Watstein. May I add something briefly?

THE COURT: Very briefly.

MR. WATSTEIN: I just want to say that that is only e-mails. There are a vast number of other data sources that Plaintiffs are seeking here. So when we talk about 4. whatever million e-mails, there's also millions of other documents in other databases that there are also motions about that we need to keep in mind. And that's why -- and I just want to stress, we filed this motion to limit discovery last night. We would ask that the Court not pre-judge that motion, at least without having it fully briefed because, again, our client cannot sustain what would be equivalent to a company like Amazon spending a billion dollars a month in discovery.

When you take the size of Eligo and their resources and you extrapolate it, as you must in a proportionality analysis, they are effectively asking us to do $300 billion worth of discovery for an Amazon-like company, which, of course, is just preposterous. So that's why we filed the motion to limit discovery.

The only question that remains in this case is whether our client set its rate pursuant to the contract. The Second

Circuit's Agway decision, which we cite in our letters, makes that very, very, very simple. Binding authority. Plaintiffs' counsel here were on the other side. They lost, making the exact same argument they are making in this case, and we are going to show and we already have shown with 30(b)(6) testimony and the documents we produced, we calculated the rates exactly like the defendant in Agway did under, basically, the same contract language. For us to be required to spend $200,000 a month for years that it would take to review all these materials only to get summary judgment is the epitome of disproportionality. Thank you, Your Honor.

MR. MCINTURFF: This is Burkett McInturff. May I please respond?

THE COURT: Briefly.

MR. MCINTURFF: This is all incredibly premature. We are talking about the date range of collecting e-mails, and those e-mails are going to be sorted with search terms. It remains to be seen what's going to happen with those e-mails afterwards.

Mr. Blankinship's firm and my firm have done over a dozen of these cases. Mr. Blankinship was lead counsel in the Agway case. Agway came down before this case was filed. If we thought Agway would have defeated the claims at issue in this case, we would have never brought the case. We recently prevailed on a very similar argument that defense counsel is

making here about the nature of the contract before Judge Halpern in July. This is a very specialized area of litigation. And with all due respect, the defendants' claims about Agway, which they are just making now -- they never made them in their motion to dismiss -- the claims that they are making about Agway are simply mistaken. They don't understand the scope of the law.

What Agway says is that the contract has to explicitly grant discretion, and here, there is no such discretion granted, as, again, Judge Halpern recently held in another case. But this is all -- this idea of limiting discovery and that we are imposing hundreds of millions -- billions of dollars just like on Amazon, it's simply insincere. Again, we have done these cases many times. We are not asking for anything out of the ordinary.

Eligo has not -- and specifically, right now, we are talking about the date range of collection. And your Honor issued an order and said that Eligo shouldn't -- we shouldn't limit the total number of potential e-mails collected, which is very sensible. There is no reason that we need to get into issues of limiting discovery and summary judgment motions that haven't been filed and arguments that were never made on the motion to dismiss.

So with all due respect, I think that defense counsel is putting the cart way before the horse here.

THE COURT: I have issued my decision. The parties should agree on search terms. And again, if there is a motion to be made concerning proportionality or costs, they should be made at the appropriate time.

It is now 22 minutes after the hour. I advised the parties at the outset that I have 45 minutes and they should be concise. No one thus far has been concise. So let's move on to the next issue and see how far we get.

Discovery collection concerning Slack. Mr. Blankinship or --

MR. MCINTURFF: I will take this one. This is Burkett McInturff.

This is pretty straightforward. On August 30, defense counsel wrote, quote, "Everything is in e-mail, Slack, and Asana." On September 5, Eligo filed a document with this Court at ECF number 53 at 2 that states, quote, "Most of the responsive documents are stored in e-mail, Slack and Asana, and locating them will require ESI searching with the assistance of professional vendors."

On September 9, defense counsel wrote to Plaintiffs, quote, "Defendants will produce all public and private Slack channels Eligo's IP administrators have access to."

After that, Eligo changed its position, and since forcing us to file a motion, we filed the letter motion. Eligo has now changed its position once again. Eligo's current

position is that it will produce all of the public and private Slack data if Plaintiffs pay for the collection. Again, that's a change in position than Eligo -- this is Eligo's now third position on Slack messages.

But the fundamental question here is, has Eligo shown what -- has Eligo met its burden to show whether the costs should be shifted to Plaintiffs? Eligo has said that this will cost $18,000 to collect and another $6,000 to do in a prompt manner, and our position is that the amount at stake in this litigation pales in comparison to that. This ESI is acceptable. Defense counsel has admitted in writing multiple times that the ESI contains responsive material. Their 30(b)(6) witness testified that he uses it in the ordinary course, which is unquestionably relevant, and the defendants are simply trying to shift the cost to Plaintiffs as a way of delaying this discovery.

Slack is an informal -- more informal manner than e-mail, and what's in Slack is going to show contemporaneous back and forth between the relevant players. And again, in terms of ESI burden, it's important to note that the parties have agreed not to collect all of Eligo's ESI and review all of Eligo's ESI. We are talking about ESI of 13 custodians. So there's 13 key players whose ESI is going to be collected. That ESI is then going to have search terms applied to it. Again, Plaintiffs have offered to Defendants, if they want,

they can simply avoid the review burden that they claim is so expensive, and just produce the search hits, but apparently Defendants aren't interested in that.

That said, the issue of Slack, it's like another e-mail system that the defendants have. They have admitted multiple times that it contains responsive information, and they haven't shown their grounds for shifting the cost to Plaintiffs to collect this information for search term application.

THE COURT: Mr. Watstein or Mr. Meadows.

MR. MEADOWS: Yes, your Honor. David Meadows.

To be brief, at your request, and to echo what Mr. Watstein said earlier, this is a good example of the incrementalism we are dealing with here. We have gotten over 4 million e-mails, but that's not enough for the plaintiffs. They also want us to collect, review, and produce these Slack databases. And Slack is a team messaging software that, yes, we early on identified as having potentially relevant documents on it. But the question from a proportionality standpoint is not just relevance. It goes beyond that to, what is the marginal utility or value of these additional databases that the plaintiffs want us to search? And here, there is none.

In fact, the plaintiffs took a 30(b)(6) deposition very recently and asked our representative some basic questions about what was in Slack, and the only evidence that they

adduced is that Slack is used by some employees in the regular course of business. Well, of course, it is, but that doesn't mean that it has anything of any marginal utility over and above the rate-setting machine learning that we are already producing, the e-mails that we are going to produce responsive to your order, which is millions of documents.

And on top of that, from a proportionality standpoint, to even access these Slack documents, to get into review database to even look at them, we have got to incur $18,000 of expenses. When we took that issue to the plaintiffs and asked for some cost sharing, they said, Not one penny; we will contribute nothing. And that's their position on discovery generally, which is, they get everything and it costs them nothing, even at the risk of practically bankrupting Eligo. So without any showing of any marginal relevance here, and the overall burden that we are incurring in this discovery, we would ask you to deny this.

And then if I might very briefly harken back. The letter motion that was filed last night about discovery, I do think we would like an opportunity to fully brief that, to bring the evidence before the Court about the disproportionate burden that all of these requests are imposing on us. Thank you.

THE COURT: Let me ask about -- is Slack just another way to e-mail, Mr. Meadows?

MR. MEADOWS: It's similar to that, from my understanding, your Honor. It is not exactly the same thing. If you think about team messaging, you know, things like Teams or software similar to that, it can be similar to e-mail, but it is not the exact same thing.

THE COURT: But it's just a way of one employee of the company communicating with another employee at the company about company business?

MR. MEADOWS: That's correct. Yes.

THE COURT: And so why should that be completely divorced from the universe of relevant documents that ought to be examined?

MR. MEADOWS: Because, your Honor, in the proportionality analysis, we look beyond relevance, and we look to the marginal value or utility.

Now, what we know is, we are going to look at and produce e-mails. We are going to look at and produce rate setting information from other databases. Is there any evidence that any use of Slack discusses any matters about rate setting, the core issue in the case, that you don't already find in the databases we're collecting and reviewing and producing? And the plaintiffs had an opportunity to develop that evidence, and they did not do it. There is no testimony -- you certainly don't see any cited in their letter motion -- saying that Slack has any special relevance or

utility whatsoever in this case, but it does have unusual costs to review that are not present elsewhere. And so that's the difference.

THE COURT: But that's not --

MR. MCINTURFF: If I may.

THE COURT: No.

That's not how I view proportionality. You don't say, well, we have, you know, five buckets of information; you can look at one bucket, and not look in the other four buckets. The way that I view proportionality is, you look at all five buckets, and you determine, How do we whittle down the information in these five buckets? I don't see why Slack, the Slack information, should be completely excluded. And my understanding was that you folks agreed that there were potentially relevant documents in Slack, but that you agreed to produce them at some point. Am I wrong about that?

MR. MEADOWS: I think the distinction that we are drawing is, early on, when they were asking us to identify potentially relevant sources, we appropriately identified Slack. What we didn't know then, what we do know now, is the shear volume of data in the other databases that we had identified. Knowing now just how many e-mails we have, knowing now that we have the Groove data, which is the input that actually generated variable rates, and other databases -- those are just two of seven, I believe, that the plaintiffs are

demanding that we search and produce. There's got to be some proportional limits imposed on that, and that's our position.

THE COURT: I agree, there ought to be proportional limits, but not by saying, Okay, we are not going to look in these other four buckets. Again, figure out what the universe is. Figure out the appropriate search terms. And then, again, if there are going to be issues concerning costs, et cetera, then you can come back, but not until then.

MR. WATSTEIN: Your Honor, this is Ryan Watstein following up on that. The issue, I think, here is that there is a cost to get these documents into a database that is searchable and producible, and that's why we went to Plaintiffs' counsel and said, Look, we are not saying you can't have any Slack information; we are saying that if you want us to search this duplicative source, we have to upgrade our license. It's going to cost $18,000. We want you to bear some of that cost because we already are giving you searches of 5 million e-mails, and it will be duplicative. So there already is a cost, your Honor. So that's already ripe. And what we are asking you is, if they want us to search that additional source that will be duplicative, that they haven't established contains any variable rate communication, they should have to pay for the license upgrade, or whatever fee there is to search that data.

THE COURT: I don't know that they have to pay for all

of it, but I will direct them to share in the cost, whatever that cost may be.

MR. MCINTURFF: Your Honor, this is Burkett McInturff. Can I respond?

Slack is a form of communication that the defendant uses in the ordinary course. That they have to incur charges to collect this information doesn't mean that they get to shift the cost to us. And defense counsel is misrepresenting the record when they say we haven't established that Slack contains relevant and independent information.

Again, the defense counsel wrote in a public filing in this case that most -- quote, "Most of the responsive documents are stored in e-mail, Slack, and Asana." So defense counsel has already written that in the record. I took a 30(b)(6) deposition on September 17, and Eligo testified that each custodian, each of the 13 custodians, use Slack in conducting their affairs. That's cited in our letter as Exhibit D.

This same witness testified that he is a member of Slack channels with other custodians, and that he is, quote, "sure" other custodians have additional Slack channels, quote, "given how Slack is used," closed quote. Slack is clearly a key mode of communication at Defendants, as it is in many, many companies. And the idea that Defendants can, A, slow down production by creating a dispute as to who has to pay for the collection, and then, B, shift the cost to Plaintiffs without

establishing any of the requisite criteria, the first one being that the information is inaccessible, it's accessible. It's not Plaintiffs' fault that the defendant has to pay for an upgrade so it can collect its Slack material. They made the choice. Eligo made the choice to use Slack in the way it did. Eligo made the choice to purchase the subscription tier it purchased. It's not on Plaintiffs to pay for Eligo to collect a source of ESI that it used in the ordinary course.

THE COURT: Are you done?

MR. MCINTURFF: Yes.

THE COURT: I have made my decision. You can contribute to it, or you don't get it, to the upgrade.

By the way, my understanding is that the upgrade will hasten the ability to cull through the various e-mails.

MR. MEADOWS: That's correct, your Honor.

THE COURT: Discovery concerning topics 14(a) to (b) and 23 in the 30(b)(6) deposition.

Mr. Blankinship or McInturff.

MR. MCINTURFF: This is me, your Honor, Mr. McInturff. Just to flag, we have jumped over ECF number 76, which is about redactions.

THE COURT: Okay. Talk about the redactions.

MR. MCINTURFF: Okay. So there's two issues in the redactions motion. The first is relevant to redactions, and then the second is standalone personally identifiable

information redactions.

On relevancy redactions, the case law overwhelmingly disfavors relevancy redactions. Eligo is claiming to reserve the right to make unilateral relevancy redactions. That's not consistent with Eligo's complaint about discovery costs because now they are saying they want to make a bunch of redactions. The case law, again, is very clear, especially when there is a protective order in place, that relevancy redactions of otherwise responsive documents is not proper.

This issue first came up in our negotiation of ESI protocol draft. On September 9, Eligo's version of the ESI protocol draft agreed with our proposal that relevancy redactions be disallowed. Then they changed course, and now they are claiming that it's premature to deal with this issue, but that's not accurate.

We need to deal with this issue at the outset because what's going to happen is we are going to get documents that are redacted for relevance. We are going to go back to Eligo, we are going to say, these are improperly redacted. And then we are going to get complaints about excessive motion practice, and expect to have to go back. So relevancy redactions should be disallowed in this case, as they are in most cases.

And then the second issue is, Eligo wants to redact the personally identifiable information of third parties. So we filed -- our motion deals with both potential class members,

other Eligo customers, as well as non-Eligo personnel. In response to our motion, Eligo changed its position and is only really talking about absent class members. Plaintiffs have agreed with Eligo that if they produce large data sets of big -- big productions of rate charging data, you know, all of the people in Brooklyn that are Eligo customers, when that comes across, it's going to contain thousands and thousands of names. We don't need that. We said that Eligo can redact that.

What we are talking about is e-mail and Slack communications and other electronically stored information that may happen to have a class member's personally identifiable information in it. Typically this comes up with people complaining. They will do things like they will write to the CEO or customer service complaints will get escalated. Eligo wants to redact those because they are afraid that we are going to contact potential class members and solicit them as plaintiffs. We have no intention of doing that. This is simply a way to slow down discovery. It's going to make discovery more expensive.

There is no reason for Eligo to be able to redact absent class member names. Class counsel is entitled to contact those individuals for witnesses if we believe that that's appropriate. Typically, if we do that, it's a very small number of potential class members.

Defense counsel's response cited a case I had with Judge Parker. They misrepresented that case was an energy case. It was not an energy case. It was about a weight loss app that uses psychology to help people maintain a healthy weight. And Judge Parker was very sensitive to the fact that the customers of that company had disclosed very private information about their body mass and body image issues, substance use, relationship habits. And Judge Parker limited our ability to contact absent class members. She believed that people would be disturbed by getting contacted by lawyers about an app where they had revealed highly personal information. That is not the case here.

Again, we don't have any immediate intention of contacting absent class members. And the idea that Defendants can redact their names in discovery that's going to go out is just going to complicate our review. It's going to impose costs on Plaintiffs, and it's improper.

THE COURT: Mr. Meadows.

MR. WATSTEIN: This is Ryan Watstein. I will take the response to this one.

I will start very briefly with the redactions for relevance. So the bottom line is that that asks for an advisory opinion. We have, as we just talked about, millions and millions of documents that we have not even yet run search terms on because, even though we asked for search terms for

months, we just got them yesterday from Plaintiffs' counsel, who says we are trying to slow down discovery. So we don't yet know what we are going to find, but what we do know is this Court, your Honor, has already placed certain limitations on discovery.

For example, your Honor held that six straight information was off limits for the time being. Secondly, and much more importantly, your Honor limited discovery to the New York claims. There's eight different states at issue under the Eligo penumbra. So it very well could be the case that we don't redact anything, but it also could be the case that there is a bunch of information in documents that are half about other states and half about New York. We wanted to redact the information about other states because your Honor already held that's off limits.

So, again, this is just another example of filing an unnecessary motion that is not -- it's trying to get a gotcha on us. They want a ruling from your Honor without even letting us look at the documents and determine if we even anticipate redacting anything. So for that reason, we think that portion of their motion should be denied outright. They can reraise it if there are issues with redactions down the road, but there are currently not, and we are entitled to preserve our objection until we review the document. So that is relevance redaction.

And the second category is redaction of class member PII. So at the outset there, I want to address this point about slowing down discovery. Again, we just got search terms yesterday. We filed a motion last night asking for the Court to order an expedited period of discovery on the core issue in this case so that we can show whether claims are precluded by binding Second Circuit authority. We will show -- your Honor will decide. They can argue this case isn't like Agway. We will show that it is. So all this discussion about how much money is at issue in this case and everything else, and how many class members there are, that all assumes they have valid claims.

I am going to make a prediction. We are going to spend millions and millions of dollars defending this case only to get summary judgment under the Agway decision. Setting that aside for a minute and going back to the PII redaction, they say they don't have any immediate intention of contacting class members. They are currently advertising on social media for additional claims against Eligo. So the idea that they don't have any intention of contacting class members strains credulity.

And the Supreme Court has said a plaintiff in a putative class action like this do not get, normally, any information, any personally identifiable information of putative class members. And in the Nichols case that we cited

involving Plaintiffs' counsel, they tried to distinguish it, but it's not distinguishable. Judge Parker said there that they argued that they merely sought to use the information to solicit fact witnesses, not representative plaintiffs. The Court called it too cute by half, and the Court entered a gag order saying, You are not to contact any of these people. And in doing so, the Court based that on the Supreme Court's precedent that I mentioned that says they don't get that information precertification.

So the concerns there -- the concerns here are far more dire, given that they are already advertising for additional plaintiffs. And they say, Well, we are not going to know what the information is if you redact it; we won't know the context. But that's not true either because we are only going to do partial redactions.

So, for example, if there is PII, there will be a partial redaction showing the name Steve, and they will know it is about somebody named Steve; they just won't have the information to contact that person precertification, which they are not entitled to.

I just had a hearing on this exact issue yesterday in front of Judge Gilbert in the Northern District of Illinois. And just like we are asking here, he said, Absolutely not; you don't get any of this information precertification; I consider myself a fiduciary of the uncertified class; you don't get to

contact those people until you show that class certification is proper.

THE COURT: Okay. Look, it's 11:45. I told you folks I only had 45 minutes and that I had to leave by then. It is astonishing to me that despite the fact I specifically told you that I had 45 minutes, and that there were any number of issues that we had to cover, and, please be concise, not a single lawyer on this call has heeded that advice. We are adjourned.

(Adjourned)